

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Robert A. Immerman and Russell Benton Snell  
Serial No. : 09/822,154 Confirmation No.: 6306

**REMARKS**

In the Office Action mailed March 18, 2003, the Examiner has issued a Final Action. Applicants respectfully state that their invention as disclosed and claimed provides an assembly with a fixture and a device to which a suction cup may be secured, for use with a variety of fixtures, such as baskets, toothbrush holders, cup holders, and other kitchen or bathroom accessories. The device enables the fixtures to be affixed, using the suction cup, to a wall or other flat vertical surface. Applicant's invention securely attaches any suction cup to the fixture. The invention eliminates the prior art problem of requiring the suction cup to be of specific dimension and hardness, which is necessary because, in the prior art, the suction cup is wedged into the fixture which the suction cup supports. Applicant's invention receives the head and neck of the suction cup but, in contrast to prior art, the neck rests in applicant's device and is held by gravity, not by friction. This has the general advantage of simplifying the installation of the suction cup within the device and the specific advantage of enabling the use of a suction cup whose neck may be mal-formed, that is, chipped or nicked. These are inventive features not found in the prior art.

To more clearly define the invention, applicant amends claims 1 and 11 and adds new claim 22. Support for the amendments to claims 1 and 11 can be found in Figure 1 and in the specification on page 3, sixth paragraph as amended in the preliminary amendment mailed June 22, 2001. Support for new claim 22 can be found in Figures 2 and 3, in original claims 1 and 11, and in the specification on page 4, fourth paragraph as amended in the amendment mailed December 16, 2002.

In the Office Action, the Examiner rejected claim 1 under 35 U.S.C. 103(a) as being

anticipated by Metcalf, U.S. Patent No. 4,060,214. The Examiner states that Metcalf shows an assembly comprising a fixture (reference 20) and a device (reference 12). Applicant respectfully traverses this rejection. Claim 1 of applicant's invention states that the device is for securing a suction cup to the assembly which distinguishes applicant's invention from Metcalf. Applicant points out that even if a suction cup were inserted into reference 12 of Metcalf, it would not secure the suction cup to the assembly. A suction cup inserted into reference 12 of Metcalf would merely hang in the air. To make the definition of the invention more precise, claim 1 now recites that the first pair of rigid wires is horizontal and the second pair is transverse thereto to define a vertical rectangle. Support for this amendment can be found in original claim 9 as well as in the specification and drawings which show suction cups situated vertically for engaging vertical walls. This is distinguishable from Metcalf where the wires are all horizontal, which is why Metcalf would have been meaningless with respect to securing a suction cup. In addition, claim 1 has been amended to recite that the rectangular opening forms means for receiving the head and retaining the neck of a suction cup. This clearly renders claim 1 patentably distinguishable from Metcalf. Thus, applicant respectfully requests that this rejection be withdrawn.

The Examiner has rejected claims 1 and 11 under 35 U.S.C. 103(a) as being unpatentable over Raphael, U.S. Design Patent No. 194,307. The Examiner states that Raphael shows an assembly comprising a fixture and a device comprising a first pair of generally parallel rigid wires traverse to a second pair of generally parallel rigid wires, which are co-planar with the first pair of wires, defining an opening and at least two fastener arrangements for fastening the device to the fixture. The Examiner further states that the suction cups shown in Raphael have compressible heads attached to a neck with the neck attached to an engagement member and that the heads are shown to be insertable into the openings made by the wires. The Examiner concludes that it would

have been obvious to one of ordinary skill in the art at the time the invention was made to make the device rectangular (it is an oval) since the opening created when the device is attached to the fixture is rectangular and it would also have been obvious to place another suction cup into that opening for added stability.

Applicant respectfully traverses this rejection. The "device" identified in the final Office Action in Raphael is not provided for holding a suction cup, since the suction cups are clearly only held in the vertical parallel wires shown in the lower part of the drawing of Raphael, as was noted in the Office Action in the present application dated December 18, 2001. Claims 1 and 11 have been amended to recite that the rectangular opening forms means for receiving the head and retaining the neck of a suction cup which is not disclosed or suggested in Raphael. Thus, applicant respectfully requests that this rejection be withdrawn.

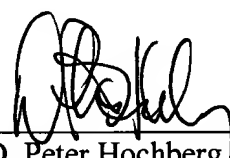
The Examiner has rejected claims 2-5 under 35 U.S.C. 103(a) as being unpatentable over Metcalf. The Examiner states that Metcalf shows all the features claimed in our invention including that the fixture and device are made out of metal and also states that the further limitation of the device being fastened to the fixture by welding, brazing, soldering or by using adhesive is a design choice. Applicant traverses this rejection and respectfully states that claims 2-5 depend from claim 1 and incorporate all of the limitations therein. Applicant has above shown that Metcalf does not anticipate claim 1 and therefore does not anticipate claims 2-5. Thus, applicant requests that the rejection of claims 2-5 be withdrawn.

Finally, the Examiner has rejected claims 2-5 and 12-15 under 35 U.S.C. 103(a) as being unpatentable over Raphael in view of Macek, U.S. Patent No. 5,620,105. The Examiner states that Raphael shows all the features claimed in applicant's invention but does not specifically state that the fixture and device are made of metal since it is a design patent. Macek however shows another

shower caddy and discloses that it is made of metal. Therefore, the Examiner states that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the caddy shown in Raphael made out of metal for durability purposes and to have the further limitation of the device being fastened to the fixture by welding, brazing, soldering or by using adhesive. Applicant traverses this rejection and respectfully states that claims 2-5 depend from claim 1 and incorporate all of the limitations therein, and claims 12-15 depend from claim 11 and incorporate all of the limitations therein. Applicant has above shown that claim 1 is not obvious within the meaning of 35 USC 103 from Raphael and therefore does not render obvious claims 2-5, and that Raphael likewise does not render obvious claim 11 and therefore does not make claims 12-15 obvious. Thus, applicant requests that the rejection of claims 2-5 and 12-15 be withdrawn.

It is respectfully submitted that the application is now in condition for allowance, and such action is requested. No new matter has been added. The Examiner is invited to telephone the undersigned if there are any matters which could be discussed to expedite the prosecution of the above-identified application.

Respectfully submitted,

By:   
D. Peter Hochberg  
Reg. No. 24,603

DPH/KRV

D. Peter Hochberg Co., L.P.A.  
1940 East Sixth Street – 6<sup>th</sup> Floor  
Cleveland, OH 44114-2294  
(216) 771-3800